

McFadden For Senate
P.O. Box 4039
Saint Paul, MN 55104

2014 NOV -6 PM 1:23

2014 NOV -4 PM 4:52

OFFICE OF GENERAL
COUNSEL

November 3, 2014

SENSITIVE

MUR 6902

Federal Election Commission
Office of the General Counsel
999 E Street, NW
Washington, DC 20463

Re: *Prohibited Coordination between Al Franken, Al Franken for Senate 2014, and Independence USA PAC.*

Dear Counsel,

This verified complaint is filed pursuant to 2 U.S.C. § 437g(a)(1) upon information and belief that Al Franken, through his authorized candidate committee Al Franken for Senate 2014, has illegally coordinated with Independence USA PAC, a registered independent expenditure-only committee, in violation of 11 C.F.R. § 109.21 and resulting in a prohibited contribution under 2 U.S.C. § 441b. The Respondents are Al Franken (candidate for U.S. Senator from Minnesota and incumbent); Al Franken for Senate 2014 (registered candidate committee #C00480384) (the "Campaign"); and Independence USA PAC (registered independent expenditure-only committee #C00532705) (the "Super PAC").

Background

On October 30, 2014 both the Campaign and the Super PAC caused television advertisements to be disseminated in Minnesota that are remarkably similar. The campaign advertisement and the Super PAC advertisement contain the exact same footage and the exact same messaging. These advertisements are nearly indistinguishable in at least the following three (3) ways:

Similarity Number 1: "Across Party Lines."

- **Franken Ad:** "Franken has made a determined effort to work across party lines." (YouTube.Com, accessed Nov. 1, 2014)
- **Super PAC Ad:** "Al Franken, he worked across party lines to pass a farm bill that our local economy depends on." (YouTube.Com, accessed Nov. 1, 2014)

Similarity Number 2: Kept His Head Down And Delivered

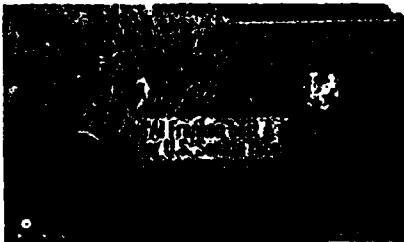
- **Franken Ad:** "Al Franken has kept his head down and delivered." (*YouTube.Com, accessed Nov. 1, 2014*)
- **Super PAC Ad:** "He kept his head down and delivered policies that benefit this state." (*YouTube.Com, accessed Nov. 1, 2014*)

Similarity Number 3: The Farm Bill

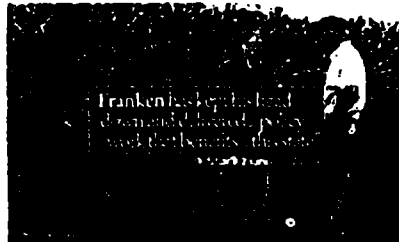
- **Franken Ad:** "He stood up for Main Street over Wall Street for a reasonable farm bill." (*YouTube.Com, accessed Nov. 1, 2014*)
- **Super PAC Ad:** "Al Franken, he worked across party lines to pass a farm bill that our local economy depends on." (*YouTube.Com, accessed Nov. 1, 2014*)

Similarity Number 4: Farmer And Field Scene

Franken Ad "Delivered"

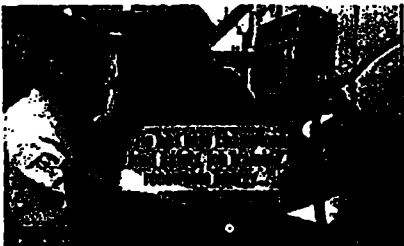


Super PAC Ad



Similarity Number 5: Factory Scene

Franken Ad "Delivered"



Super PAC Ad



Similarity Number 6: Crowd Scene:

Franken Ad "Delivered"



Super PAC Ad



The Super PAC filed a 24-Hour Notice of independent expenditure on October 31, 2014 disclosing an expenditure of \$512,850.65 for "TV Ad Buy and Production" disseminated on October 30, 2014 in support of Al Franken. The Campaign has yet to file any financial disclosure reports of their expenditure for their final ad, entitled "Delivered," which mirrors the Super PAC ad. However, the Campaign uploaded the "Delivered" ad to its website on October 30, 2014, the same day that the Super PAC disseminated its mirror ad.¹ It strains credulity to believe that the Super PAC and the Campaign independently selected the exact same footage and messaging, independently produced separate ads using the same footage and messaging, and independently shipped for airing the mirror ads so that they were each disseminated on the exact same day.

Legal Analysis

The Respondent Super PAC is an independent expenditure only committee and as such is prohibited from making any contribution to the Respondent Campaign.² Further, any contributions received by Respondent Campaign from Respondent Super PAC is a prohibited corporate contribution pursuant to 2 U.S.C. § 441b. It appears that the majority of the overlapping content in these mirror ads comes from Respondent Campaign's video footage, which has been made available for download at <http://www.alfranken.com/media/>.

Pursuant to 11 CFR 109.23(a), "[t]he financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic or other form of campaign material prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure." Respondent Super PAC republished the Respondent Campaign's video footage in these mirror ads. Respondent Super PAC reported to the FEC that it paid \$512,850.65 to produce and air its mirror ad. Respondent Super PAC's expenditure to produce and air its mirror ad is an illegal contribution to Respondent Campaign.

¹ <http://www.alfranken.com/2014/10/30/release-final-ad-features-senator-frankens-hard-work-minnesota/> (October 30, 2014).

² See Independence USA PAC Statement of Organization filed Oct. 18, 2012.

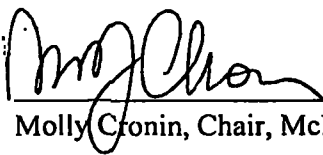
In view of the practical limitations that exist for two group's to independently produce and ship a television advertisement in such a way that their air dates are exactly the same, it is apparent that the Super PAC and the Campaign engaged in prohibited coordination creating a prohibited contribution. The Super PAC could not have paid any amount to so perfectly coordinate the October 30, 2014 airing of this ad with the October 30, 2014 airing of the Campaign ad.

Conclusion

We ask that the Commission find violations of 11 C.F.R. § 109.21 and 2 U.S.C. § 441b and put an end to the illegal coordination evident between Respondents. To the extent that Respondents wish to conduct themselves in such an overtly illegal manner in the last remaining days before the upcoming General Election in the hopes that they will escape the public's view or the Commission's attention, the Commission should not allow Respondents to act with impunity; regardless of the timing of their mirror ads.

Sincerely,

The above and foregoing is sworn to, and is based upon information and belief of the undersigned, Molly Cronin, Chair, McFadden for Senate.



Molly Cronin, Chair, McFadden for Senate

ACKNOWLEDGMENT

STATE OF Minnesota

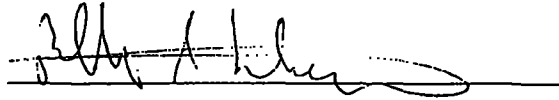
: ss.

County of DeKette)



On the 03 day of Nov, 2014, before me, the undersigned Notary Public, personally appeared Molly Cornigan-Cr..., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same.

IN WITNESS WHEREOF, I have set my hand and seal the day and year as above written.



Notary Public

Commission Expires: 1/31/2016